

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

KIM T. COLE,

Plaintiff,

v.

**CARRINGTON MORTGAGE
SERVICES, LLC and CARRINGTON
FORECLOSURE SERVICES, LLC,**

Defendants.

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Civil Action No.: 4:20-cv-29-SDJ-KPJ

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On January 27, 2021, the Magistrate Judge entered proposed findings of fact and recommendations (the “Report”) (Dkt. #14) that Defendants’ Motion to Dismiss for Failure to Serve (the “Motion”) (Dkt. #5) be granted and the case be dismissed without prejudice.

On April 27, 2020, Defendants notified the Court that Plaintiff had not served them with the lawsuit and on July 20, 2020, Defendants filed the Motion requesting dismissal for want of prosecution and lack of personal jurisdiction. *See* Dkts. #4, #5. On September 24, 2020, the Court issued an Order warning Plaintiff that failure to file a response to the Motion on or before October 16, 2020, would result in a recommendation of dismissal of this suit, but that if dismissal were satisfactory to Plaintiff, no further action was necessary. *See* Dkt. #10.

The Order was mailed to Plaintiff, but was returned to sender, not deliverable as addressed. *See* Dkt. #12. The Magistrate Judge then issued the Report recommending dismissal, and it was

mailed to Plaintiff, but it was also returned to sender as unclaimed/unable to forward. *See* Dkt. #15.

As noted in the Report, pursuant to the Eastern District of Texas' Local Rules, a "*pro se* litigant must provide the court with a physical address (i.e., a post office box is not acceptable) and is responsible for keeping the clerk advised in writing of his or her current physical address." LOCAL RULE CV-11(d).

It is uncontroverted that Plaintiff has not completed service of process on Defendants. Further, Plaintiff has not maintained an address for participation in this lawsuit. As cited in the Report, absent a showing of good cause, any defendant not served within ninety (90) days after the complaint is filed must be dismissed without prejudice for want of prosecution or the Court must order that service be made within a specified time. *See* FED. R. CIV. P. 4(m). More than ninety (90) days have elapsed since this suit was filed. Thus, the Report recommended that the case be dismissed without prejudice. *See* Dkt. #5.


Having received the Report of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.

Accordingly, Defendants' Motion to Dismiss for Failure to Serve (Dkt. #5) is **GRANTED**.

Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED** that this entire action, and all of the claims asserted therein, be **DISMISSED WITHOUT PREJUDICE**. Each party shall bear its own costs.

All relief not previously granted is hereby **DENIED**, and the Clerk is directed to **CLOSE** this civil action.

So ORDERED and SIGNED this 22nd day of March, 2021.



SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE